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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11

12 KAREL SPIKES.

13 Plaintiff,

14 vs.

15 EUROPEAN CAR SERVICE; ANDREW
MACIEJEWSKI; ZENON SMOCZYNSKI,
and DOES 1 THROUGH 10, Inclusive.

16 Defendants.
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18
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Case No. 07CV2394LABWMC

ANSWER TO CIVIL COMPLAINT

20 NOW COME Defendants EUROPEAN CAR SERVICE and ZENON SMOCZYNSKI
21 (hereby DEFENDANTS), by and through their attorneys of record Preovolos & Associates, ALC
22 file this Answer to the Civil Complaint of Plaintiff KAREL SPIKES as follows:

23 That Defendants deny all allegations in Plaintiff's Complaint unless specifically admitted
24 or explained otherwise:

25 **JURISDICTION AND VENUE**

26 1 With respect to Paragraph 1, PLAINTIFF'S Complaint sets forth legal conclusions to
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1 which no response is required.

2 2 With respect to Paragraph 2, PLAINTIFF'S Complaint sets forth legal conclusions to
3 which no response is required.

4 3 With respect to Paragraph 3, PLAINTIFF'S Complaint sets forth legal conclusions to
5 which no response is required. However, DEFENDANTS deny that PLAINTIFF was denied
6 equal access to DEFENDANTS facilities, goods, and/or services. DEFENDANTS deny that they
7 have violated either federal or state law. DEFENDANTS deny injuring PLAINTIFF.

8 **THE PARTIES**

9 4 With respect to Paragraph 4, DEFENDANTS admit that EUROPEAN CAR SERVICES
10 is located at 8855 La Mesa Boulevard, La Mesa, CA (hereinafter "the subject property") and the
11 lessee of the subject property. DEFENDANTS deny all remaining allegations set forth in
12 paragraph 4 of PLAINTIFFS Complaint.

13 5 With respect to Paragraph 5 of PLAINTIFFS Complaint, DEFENDANTS deny the
14 allegations.

15 6 With respect to Paragraph 6 of PLAINTIFFS Complaint, DEFENDANTS admit the
16 allegations.

17 7 With respect to Paragraph 7 of PLAINTIFFS Complaint, DEFENDANTS deny the
18 allegations

19 8 With respect to Paragraph 8 lines 22-28 of PLAINTIFFS Complaint, DEFENDANTS are
20 without knowledge or information sufficient to admit or deny the facts contained in the
21 paragraphs. Therefore DEFENDANTS deny the allegations. With respect to lines 1-6,
22 DEFENDANTS deny that PLAINTIFF availed herself to goods, services, facilities, privileges,
23 advantages, or accommodations operated and/or owned by DEFENDANTS and/or located on the
24 subject property.

25 9 With respect to Paragraph 9 of PLAINTIFFS Complaint, DEFENDANTS deny the
26 allegations.

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1 10 With respect to Paragraph 10 of PLAINTIFF'S Complaint, DEFENDANTS are without
2 knowledge or information sufficient to admit or deny the facts contained in the paragraphs.
3 Therefore, DEFENDANTS deny the allegations.

4 11 With respect to Paragraph 11 of PLAINTIFF'S Complaint, DEFENDANTS deny the
5 allegations.

6 12 With respect to Paragraph 12 of PLAINTIFF'S Complaint, DEFENDANTS deny the
7 allegations.

8 13 With respect to Paragraph 13 of PLAINTIFF'S Complaint, DEFENDANTS deny the
9 allegations.

10 14 With respect to Paragraph 14 of PLAINTIFF'S Complaint, DEFENDANTS deny the
11 allegations.

12 15 With respect to Paragraph 15 of PLAINTIFF'S Complaint, DEFENDANTS deny the
13 allegations.

14 16 With respect to Paragraph 16 of PLAINTIFF'S Complaint, DEFENDANTS deny the
15 allegations.

16 **FIRST CLAIM FOR RELIEF**

17 17 With respect to Paragraph 17 of PLAINTIFF'S Complaint, DEFENDANTS deny the
18 allegations.

19 18 With respect to Paragraph 18 of PLAINTIFF'S Complaint, DEFENDANTS deny the
20 allegations.

21 19 With respect to Paragraph 19 of PLAINTIFF'S Complaint, DEFENDANTS admit that
22 PLAINTIFF is seeking injunctive relief. DEFENDANTS deny that PLAINTIFF is entitled to it.

23 **SECOND CLAIM FOR RELIEF**

24 20 With respect to Paragraph 20 of PLAINTIFF'S Complaint, DEFENDANTS deny the
25 allegations.

26 21 With respect to Paragraph 21 of PLAINTIFF'S Complaint, DEFENDANTS deny the
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1 allegations.

2 22 With respect to Paragraph 22 of PLAINTIFF'S Complaint, DEFENDANTS deny the
3 allegations.

4 23 With respect to Paragraph 23 of PLAINTIFF'S Complaint, DEFENDANTS deny the
5 allegations.

6 24 With respect to Paragraph 24 of PLAINTIFF'S Complaint, DEFENDANTS admit that
7 PLAINTIFF is seeking relief. DEFENDANTS deny that PLAINTIFF is entitled to it

8 **THIRD CLAIM FOR RELIEF**

9 25 With respect to Paragraph 25 of PLAINTIFF'S Complaint, DEFENDANTS deny the
10 allegations.

11 26 With respect to Paragraph 26 of PLAINTIFF'S Complaint, DEFENDANTS deny the
12 allegations.

13 27 With respect to Paragraph 27 of PLAINTIFF'S Complaint, DEFENDANTS deny the
14 allegations.

15 28 With respect to Paragraph 28 of PLAINTIFF'S Complaint, DEFENDANTS deny the
16 allegations.

17 **FOURTH CLAIM FOR RELIEF**

18 29 With respect to Paragraph 29 of PLAINTIFF'S Complaint, DEFENDANTS deny the
19 allegations.

20 30 With respect to Paragraph 30 of PLAINTIFF'S Complaint, DEFENDANTS deny the
21 allegations.

22 31 With respect to Paragraph 31 of PLAINTIFF'S Complaint, DEFENDANTS deny the
23 allegations.

24 **FIFTH CLAIM FOR RELIEF**

25 32 With respect to Paragraph 32 of PLAINTIFF'S Complaint, DEFENDANTS deny the
26 allegations.

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33 With respect to Paragraph 34 of PLAINTIFF'S Complaint, DEFENDANTS deny the
allegations..

34 With respect to Paragraph 34 of PLAINTIFF'S Complaint, DEFENDANTS admit that
PLAINTIFF is seeking injunctive relief. DEFENDANTS deny that PLAINTIFF is entitled to it.

JURY DEMAND

35 With respect to Paragraph 35 of PLAINTIFF'S Complaint and pursuant to Rule 38 of the
Federal Rules of Civil Procedure, DEFENDANTS are amenable to a jury trial

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

PLAINTIFF'S Complaint, and each purported claim for relief therein, fails to state facts
sufficient to constitute a claim for relief against the answering DEFENDANTS.

SECOND AFFIRMATIVE DEFENSE

PLAINTIFFS did not exercise ordinary care, caution or prudence and the resultant alleged
injuries and/or damages, if any, were legally contributed to and caused by PLAINTIFFS careless
and negligence thus barring or diminishing PLAINTIFFS recovery against these answering
DEFENDANTS.

THIRD AFFIRMATIVE DEFENSE

Any alleged wrongful acts or deprivation of rights were legally caused by third parties other than
this DEFENDANT, thus barring or diminishing PLAINTIFFS recovery against these
DEFENDANTS. Additionally, these answering DEFENDANTS would be entitled to
contribution and/or indemnification from such third parties.

FOURTH AFFIRMATIVE DEFENSE

PLAINTIFF'S claims are barred by the applicable statute of limitations.

FIFTH AFFIRMATIVE DEFENSE

PLAINTIFF'S lack standing and/or are not members of the class intended to be protected by the
applicable law and, accordingly PLAINTIFF'S claims are barred.

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SIXTH AFFIRMATIVE DEFENSE

PLAINTIFFS failed to mitigate their damages, if any, thus barring or diminishing PLAINTIFF'S recovery against the answering DEFENDANTS.

SEVENTH AFFIRMATIVE DEFENSE

PLAINTIFFS claims are barred by the equitable doctrine of unclean hands and/or laches

EIGHTH AFFIRMATIVE DEFENSE

PLAINTIFF'S claims for equitable remedies are barred due to the doctrine of waiver and/or estoppel.

NINTH AFFIRMATIVE DEFENSE

The answering DEFENDANTS assert, without admitting that it engaged in any of these acts or conduct attributed to it by the Complaint, that any of the alleged acts or conduct which may have been engaged in by DEFENDANT were reasonable, justified, in good faith, privileged and/or for legitimate, non-discriminatory business reasons.

TENTH AFFIRMATIVE DEFENSE

Any duty or obligation which PLAINTIFF'S claim is owed by DEFENDANT has been fully performed satisfied and/or discharged.

ELEVENTH AFFIRMATIVE DEFENSE

PLAINTIFF'S claims are barred by their failure to properly exhaust the appropriate remedies and/or perform the necessary conditions precedent.

TWELFTH AFFIRMATIVE DEFENSE

PLAINTIFF'S have failed to state a claim for injunctive and/or equitable relief.

THIRTEENTH AFFIRMATIVE DEFENSE

PLAINTIFF'S claims are moot.

FOURTEENTH AFFIRMATIVE DEFENSE

PLAINTIFF'S claims are barred because the answering DEFENDANTS did not discriminate against them by refusing to provide full and equal enjoyment of any accommodation or service

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1 allegedly offered.

2 **FIFTEENTH AFFIRMATIVE DEFENSE**

3 These answering DEFENDANTS alleged acts were not arbitrary and intentional, and/or such
4 alleged acts were in the furtherance of legitimate business interest and, accordingly
5 PLAINTIFF'S claims are barred.

6 **SIXTEENTH AFFIRMATIVE DEFENSE**

7 These answering DEFENDANTS assert that its alleged policies and/or practices bear a
8 reasonable relation to commercial objectives appropriate to an enterprise allegedly serving the
9 public and, accordingly PLAINTIFF'S claims are barred.

10 **SEVENTEENTH AFFIRMATIVE DEFENSE**

11 These answering DEFENDANTS assert that it is not a business entity covered by the Unruh Act,
12 Americans with Disabilities Act, or the other statutes referenced by PLAINTIFFS in their
13 Complaint and, accordingly, PLAINTIFFS claims are barred as these answering DEFENDANTS.

14 **EIGHTEENTH AFFIRMATIVE DEFENSE**

15 PLAINTIFFS did not suffer damages attributable to the action or inaction of this answering
16 DEFENDANT during the period alleged in PLAINTIFFS Complaint.

17 **NINETEENTH AFFIRMATIVE DEFENSE**

18 These answering DEFENDANTS assert its alleged actions and/or inaction is based on its
19 exercise of constitutionally protected rights, under both the United States and California
20 Constitutions. As a result, PLAINTIFFS are not entitled to the relief requested in the Complaint.

21 **TWENTIETH AFFIRMATIVE DEFENSE**

22 PLAINTIFF'S claims are preempted by other federal and/or state laws.

23 **TWENTY FIRST AFFIRMATIVE DEFENSE**

24 These answering DEFENDANTS assert that any alleged failure by DEFENDANT to alter, repair,
25 or modify the premises does not give rise to a claim for relief by PLAINTIFFS under the Unruh
26 Act, since the Unruh Act specifically exempts such conduct from the scope of the act.

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TWENTY SECOND AFFIRMATIVE DEFENSE

These answering DEFENDANTS had no duty to modify, alter, or repair already existing structures. Accordingly, PLAINTIFF'S claims as these DEFENDANTS are barred.

TWENTY THIRD AFFIRMATIVE DEFENSE

These answering DEFENDANTS assert it had no duty to provide a higher degree of care for an individual with an alleged disability than for an individual who is not disabled under the circumstances. Accordingly, PLAINTIFF'S claims as these answering DEFENDANTS are barred.

TWENTY FOURTH AFFIRMATIVE DEFENSE

These answering DEFENDANTS assert its alleged policies are facially neutral and are thus not actionable by these PLAINTIFFS.

TWENTY FIFTH AFFIRMATIVE DEFENSE

These answering DEFENDANTS assert that there have been no alterations, structural repairs, or additions made since the time-frame proscribed by law, and/or any such alleged alterations, structural repairs, or additions were made to areas unrelated to PLAINTIFFS claims. Accordingly, PLAINTIFFS claims are barred.

TWENTY SIXTH AFFIRMATIVE DEFENSE

DEFENDANTS assert that the changes and/or modifications of the premises to address the allegations set forth in the Complaint are not required by the Americans with Disabilities Act, the ADAAG or California Title 24 Building Code Requirements.

TWENTY SEVENTH AFFIRMATIVE DEFENSE

DEFENDANT asserts that punitive and and/or exemplary damages are so punitive in purpose and effect as to constitute a criminal penalty, entitling this DEFENDANT to the rights given to DEFENDANTS in criminal proceedings under the United States and California Constitutions. All procedures and application of California and Federal law in this action which deny these answering DEFENDANTS such rights including, but not limited to, a burden of proof beyond a

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1 reasonable doubt, a unanimous jury and the right against self-incrimination, violate these
2 answering DEFENDANTS rights under such constitutional provisions.

3 **TWENTY EIGHTH AFFIRMATIVE DEFENSE**

4 These answering DEFENDANTS assert that punitive, treble, and/or exemplary damages violate
5 this answering DEFENDANTS due process rights and impose an undue burden on interstate
6 commerce, as such protection is provided under the United States and California Constitutions.

7 **TWENTY NINTH AFFIRMATIVE DEFENSE**

8 These answering DEFENDANTS presently have insufficient knowledge or information upon
9 which to form a belief as to whether as yet unknown, affirmative defenses exist. Therefore
10 DEFENDANTS accordingly reserves the right to assert additional affirmative defenses in the
11 event discovery indicates it would be appropriate.

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13 WHEREFORE, EUROPEAN CAR SERVICE and ZENON SMOCZYNSKI pray for judgment
14 as follows:

- 15 1) That the Complaint against DEFENDANTS be dismissed with prejudice.
16 2) That PLAINTIFFS take nothing by their Complaint, and that judgment be entered in
17 favor of DEFENDANTS;
18 3) That PLAINTIFF be granted no relief in this action;
19 4) That DEFENDANTS be awarded its costs of suit and attorney's fees incurred therein; and
20 5) That DEFENDANTS be awarded such other and relief as the Court deems just and
21 proper.

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23 Dated: February 4, 2008

PREOVOLOS & ASSOCIATES

24 By: 

25 Thanasi Preovolos
26 Attorney for Defendants
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